STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. 17E-2012-00187

A.C., a minor by her parent and guardian, L.C., and L.C. individually, and the Director of the New Jersey Division on Civil Rights, Complainants, v. Screamin' Parties, Respondent.	Administrative Action **FINDING OF PROBABLE CAUSE**

The Director of the New Jersey Division on Civil Rights (DCR), pursuant to N.J.S.A. 1:5-14 and attendant procedural regulations, hereby finds that probable cause exists to believe that an unlawful discriminatory practice has occurred in this matter.

On January 4, 2012, L.C.[1] filed a verified complaint with the DCR alleging that her minor daughter, A.C., was sexually harassed while working for Screamin' Parties (Respondent) and then fired for complaining about the conduct, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Respondent denied the allegations of discrimination. DCR investigated the allegations, allowing the parties an opportunity to submit evidence and assert their position concerning the allegations. Following a review of the materials gathered as part of the investigation and the governing legal standards, the Director now finds the following.

[1] Pursuant to N.J.A.C. 13:3-2.10, because the allegations involve an aggrieved party who is a minor, Complainant and any individuals who are minors are referred to with a pseudonym. The Director of the Division on Civil Rights has joined as a complainant in this matter in the public interest pursuant to N.J.A.C. 13:4-2.2 (e). However, for purposes of this finding, the term "Complainant" will refer only to A.C.

A.C. is a resident of Paramus, New Jersey. On January 22, 2011, she was hired to work as a party host/kitchen employee at Respondent's facility in West Nyack, NY. In February 2011, she transferred to Respondent's facility at 651 Rt. 17 South, Paramus, NJ 07652, pursuant to arrangements made upon her hire.

Respondent has three facilities that host parties for children ages two to twelve years old, and offers "open bounce," i.e., a time the facilities are open for public drop-in use. The facilities have arena areas containing inflatable slides, obstacle courses, and bounce houses, among other attractions. Respondent's Paramus facility is primarily operated by Howard Abraham and Christina Sachs.

A.C. alleged that from April 2011 until her discharge on December 15, 2011, her manager, Mark Teta, subjected her to unwelcome sexual remarks and text messages such as, "Can I hit it in the morning?" "Meet me in the closet," and "Meet me in the back room." A.C. alleged that she received such offensive messages and comments at least three to four times per month and that they only subsided from May 2011 to July 2011, when Teta's girlfriend was employed by Respondent. A.C. alleged that a co-worker, B.O., stated that Teta told him and other male employees that there would be a "race" between A.C. and another minor female employee to see "who would be the first to suck [Teta's] dick." A.C. stated that she did not socialize with Teta outside of work and that Teta obtained her phone number from Respondent's records.

In November 2011, A.C. complained about Teta's inappropriate comments to Sachs. She told Sachs that she found Teta's fellatio remark to be particularly offensive. A.C. stated that she did not tell Sachs about the text messages at the time because Abraham and Sachs "would always say what happens outside stays outside, so [she] figured [she'd] keep blowing [Teta's text messages] off, work, and get paid." A.C. alleged that despite bringing the matter to Sachs' attention, her supervisor's offensive behavior continued. For instance, she alleged that on December 8, 2011, Teta sent her a text message that read, "Fuck mi."

On December 15, 2011, A.C., was asked to come into work to assist with a party. When she arrived, Teta reassigned her to "open bounce night." Several hours later, Teta contacted Abraham and reported that A.C. had her cell phone in the play area. Abraham came to the facility and confiscated A.C.'s cell phone. Abraham told A.C. to leave work. He sent A.C. a text message a couple of days later informing her she was fired.

Respondent stated that it had an anti-discrimination policy in place and that it took prompt and effective measures once it was apprised of A.C.'s allegations. Abraham and Sachs stated that it is a "small family run company that runs on trust" and all new employees were verbally apprised of the company's policy against sexual harassment. They said that on March 31, 2012, they developed a written policy as well. Sachs stated that around the same time, she and Abraham took disciplinary action against Teta as a result of A.C.'s allegations.

Sachs stated that months earlier, after receiving A.C.'s internal complaint, she confronted Teta and said, "We don't allow that language here." Sachs stated that she did not discuss the matter with Abraham or take any additional action. She stated that she continued to schedule A.C. and Teta to work together and never recieved additional complaints from A.C.

Abraham and Sachs claimed that Teta was not a manager and only assisted Sachs as needed. They also denied the allegation of retaliatory discharge. They claimed that they fired A.C. because she violated a company rule that banned employees from using cell phones in the play areas. The policy required employees to leave their cell phones in a communal bin at the front desk during their shifts. Sachs stated that surveillance footage from December 15, 2011, showed A.C. using her cellular phone in the play area.[2] Abraham and Sachs stated that all employees were verbally apprised of the cell phone policy upon hire and that the policy was posted on the Respondent's *Facebook* page on November 17, 2011.[3] They stated that they encouraged

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[2] Respondent appeared to be unable or unwilling to produce the surveillance footage.

[3] Employees were required to "friend" Respondent's *Facebook* page so that they could obtain scheduling information and other work-related communications.

employees to report anyone they observed violating the policy. They said that the penalty for violating the policy was dismissal but acknowledged that some violators received only verbal warnings, some were asked to leave their shift, and others were discharged.

The investigation found that on at least one other occasion, Respondent may have been aware that Teta was engaged in inappropriate behavior with female employees. On one occasion during which Teta was assigned to the front desk, a female employee's cell phone was misappropriated and used to post a sexual endorsement of Teta to the female employee's *Facebook* page. The post stated, "If you ladies want to meet the most awesome guy add him on FB Mark Teta He is so amazing and sexy :) you will not be disappointed." [sic]. Respondent appeared to suspect that Teta was responsible for the post because Sharon Reiser Abraham (i.e., Howard's wife) commented, "Mark, if u are hacking [A.]'s phone, quit texting and get to work..!" (sic). Howard Abraham and Christina Sachs also commented on the post. Sachs wrote, "Haha," and Abraham responding "Omg." Teta subsequently posted a brief denial of any misappropriation with no additional comments thereafter.

After concluding an investigation, DCR is required to determine whether "probable cause" exists to credit a complainant's allegation of discrimination. Probable cause has been described under the LAD as a reasonable ground for suspicion supported by facts and circumstances strong enough to warrant a cautious person to believe that the law was violated and that matter should proceed to hearing. Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev'd on other grounds, 120 N.J. 73 (1990), cert. den., 111 S.Ct. 799. A finding of probable cause is not an adjudication on the merits but simply an "initial culling-out process" in which the DCR makes a preliminary determination of whether further DCR action is warranted. Sprague v. Glassboro State College, 161 N.J. Super. 218, 226 (App. Div.1978).

Sexual harassment hostile working environment is a form of gender discrimination. See Lehmann v. Toys 'R' Us, Inc., 132 N.J. 587, 607 (1993). In such cases, the issue is whether the conduct occurred because of gender, and whether a reasonable woman would consider the

conduct to be sufficiently severe or pervasive to alter the conditions of employment and create an intimidating, hostile, or offensive working environment. Id. at 603. An employer that delegates the authority to control the work environment to a supervisor is vicariously liable if that supervisor abuses the delegated authority and creates a hostile work environment. Id. at 619-20. A plaintiff may show that an employer was negligent "by its failure to have in place well-publicized and enforced anti-harassment policies, effective formal and informal complaint structures, training, and/or monitoring mechanisms." Id. at 621 ("We do not hold that the absence of such mechanisms automatically constitutes negligence, nor that the presence of such mechanisms demonstrates the absence of negligence. However, the existence of effective preventative mechanisms provides some evidence of due care on the part of the employer."). The LAD makes it illegal for an employer to retaliate against an employee because she complained about sexual harassment in the workplace. N.J.S.A. 10:5-12(d).

Here, the evidence supports a reasonable suspicion the A.C. was subjected to a hostile work environment. The DCR investigator viewed images of several of the text messages allegedly sent by Teta to the minor A.C. B.O. corroborated hearing Teta's remark about a fellatio "race" between two minor female employees. B.O. also claimed that he saw a message from Teta to A.C. that said, "Come over to my house and we'll do stuff." He noted that A.C. rejected Teta's request. Indeed, all of the employees who spoke to DCR stated that Teta routinely engaged in inappropriate communications with the female employees. One female witness characterized the comments made to A.C. as "stupid humor." Another employee stated that Teta had a reputation for discomforting behavior. She said, "Every time new girls would come in, we would warn them that [Teta] tries to get close to girls, but he means well." That witness stated that A.C. appeared to be visibly uncomfortable whenever she interacted with Teta. While the employees interviewed may have had differing assessments as to the impact of Teta's behavior, all of them confirmed that Teta routinely engaged in such conduct.

The investigation did not corroborate Respondent's claim that Teta was simply a co-worker who lacked supervisory authority. A.C.'s uncontradicted assertion that Teta reassigned her to a different task on December 15, 2011, supports her assertion that he had supervisory control over her working conditions. Indeed, all of the employees who spoke to DCR stated that they considered Teta to be their manager. Teta stated that he was an acting manager since August 2011. Teta stated at a holiday party in December 2011, he was formally given the title, keys, bank card, and a salary increase to $450 a week (an increase from the $8 per hour) to take effect January 2012.

The investigation did not corroborate Sachs' claim that she took prompt and thorough remedial action upon receiving A.C.'s complaint. Teta stated that Sachs merely approached him and said, "[A.C.] came up to me about something you said, but don't worry, I took care of everything." Teta stated that Sachs did not give him any further information. Teta stated that he was not told about the allegations of sexual harassment until after the DCR verified complaint was served on Respondent. He stated that on March 31, 2012, he was asked to sign a written sexual harassment policy and told by Abraham that all employees were now required to sign the policy. He stated that Abraham told him, "We're doing this because we're going to court and need to cover our asses." Teta stated that at no time during that discussion was there any mention of his personal conduct or A.C.'s complaint. It appears that Respondent was aware of the type of behavior Teta engaged in, not just from A.C.'s complaint but also from the responses the owners posted on an employee's *Facebook* page when they believed Teta hacked into the employee's account and posted comments about himself.

The investigation did not corroborate Respondent's claim that new hires were told about the company's policy against sexual harassment. Here again, employees who spoke to DCR contradicted that assertion.

Finally, the investigation did not corroborate Respondent's assertion that A.C.'s termination was solely related to violating the cell phone policy. Teta stated that Abraham and Sachs observed

him violating the policy but never reprimanded him. In fact, Teta stated that Abraham and Sachs saw multiple employees in possession and/or using their cell phones during their respective shifts but elected not to issue any disciplines or reprimands. Teta stated, "It's favoritism . . . if [Abraham and Sachs] like you, you won't get fired." All of the employees who spoke to DCR stated that they were aware of the cell phone policy but that there was no uniformity in its enforcement, and that few reprimands were ever issued despite a number of violations. Additionally, if Teta reported A.C.'s cell phone violation, and not the violations of others, because A.C. had just made her complaint of sexual harassment, Respondent could be liable for a retaliatory discharge under a "cat's paw" theory. See Staub v. Proctor Hospital, 131 S.Ct. 1186 (2011).

Based on the above, the DCR finds that there is a reasonable ground of suspicion to conclude that A.C. was subjected to a hostile work environment by a supervisor, that she engaged in a protected activity by complaining to Respondent, that Respondent failed to take prompt and effective remedial action, that Respondent did not attempt to implement any sort of well-publicized and enforced anti-harassment policy designed to protect its employees against sexual harassment until months after it received A.C.'s verified complaint, and that Respondent fired A.C. in retaliation for complaining that she was being subjected to a hostile work environment.

WHEREFORE, it is on this 26th day of APRIL, 2013, determined and found that PROBABLE CAUSE exists to credit the allegations of the complaint.

CRAIG SASHIHARA, DIRECTOR
NJ DIVISION ON CIVIL RIGHTS